ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION IV

CA07-1164

February 27, 2008

KENNETH CROWLEY, JR.
APPELLANT
v.

ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES
APPELLEE

AN APPEAL FROM SEBASTIAN COUNTY CIRCUIT COURT
[No. JV2006-299]

HONORABLE MARK HEWETT, CIRCUIT JUDGE

AFFIRMED

Kenneth Crowley, Jr., appeals from an order of the Sebastian County Circuit Court terminating his parental rights to his daughter A.C., born on April 4, 2006. We affirm the trial court's decision.

Appellee, the Arkansas Department of Health and Human Services (DHS), filed a petition for emergency custody of A.C. on April 14, 2006, alleging severe neglect. The child's mother, appellant's estranged wife, Serenity Crowley, was living in a motel with her boyfriend and the infant. At that time, the child bore the boyfriend's last name. DHS asserted that A.C. had been discharged from the hospital with orders that her mother immediately obtain an apnea monitor and medication for her formula and that she complete CPR training; Serenity,

however, did none of these things. In the supporting affidavit, a DHS worker stated that the Crowleys had a previous infant who had died on February 27, 2005, from compression suffocation; that Serenity was on the central registry as the perpetrator of her infant's death; and that criminal charges relating to his death were still pending. The DHS worker stated that A.C. was sleeping on a changing table;[1] that she was not on an apnea monitor; that the room was cluttered, dirty, filled with trash, smoky, and hot; that A.C.'s umbilical cord was bleeding and had not been properly cared for; and that her fingernails, neck, and ear were caked with dirt. On April 14, 2006, the court issued an order for emergency custody of A.C. A probable-cause hearing was held on April 18, 2006, at which appellant appeared without counsel. The court found probable cause to continue A.C.'s custody with DHS and ordered the parents to submit to an immediate drug screen.

An adjudication hearing was held on May 19, 2006, at which appellant appeared with his attorney. The court found A.C. to be dependent-neglected because of environmental neglect and recounted that Serenity had been found to have caused the death of the other baby while living with appellant. The case plan's goal was set at reunification, and appellant was awarded visitation once per month; if genetic testing proved him to be the child's biological father, he would be entitled to visitation once per week. The court ordered appellant to complete parenting classes; to submit to a psychological evaluation and complete any counseling recommended; to submit to a drug-and-alcohol assessment and complete any

[1]The photographs in the record show how easily A.C. could have fallen off the changing table.

recommended treatment; to obtain and maintain appropriate housing and income sufficient to support the child; to obtain transportation; and to submit to random drug screens.

In August 2006, the DNA test revealed that appellant is the biological father of the child. DHS then began offering reunification services to him. On October 27, 2006, the court directed appellant to pay $50 per week in child support. On March 28, 2007 (following an October 12, 2006 hearing), the court entered an order finding appellant to be the child's father; continuing child support; and noting that, although appellant had started a job, completed parenting classes, and submitted to a drug and alcohol assessment, he had no transportation or appropriate housing.

On March 26, 2007, following a March 1, 2007 hearing at which appellant and his attorney appeared, the circuit court entered a permanency-planning order changing the goal to termination of parental rights and adoption. The court found that appellant had not complied with the case plan or court orders; that he did not have stable, appropriate housing or income; that he had failed to pay child support as ordered; and that he had not visited regularly. The court acknowledged that appellant had completed parenting classes, a psychological evaluation, and a drug-and-alcohol assessment. The court ordered him to complete all of the recommendations of his drug-and-alcohol assessment and to submit to a drug screen that day. It also directed DHS to request a home study on appellant's sister's home in Tulsa.

On July 5, 2007, DHS filed a petition for termination of parental rights on the ground that the child had been adjudicated dependent-neglected and had continued out of the parents' home for a period of time in excess of twelve months and that, despite meaningful

efforts on the part of DHS to rehabilitate the parents and to correct the conditions that caused removal, those conditions had not been remedied. DHS stated that appellant tested positive for drugs on March 1, 2007.

A termination hearing was held on July 30, 2007, at which appellant and his attorney were present. DHS presented evidence that appellant was $2000 in arrears on his child support; that his utilities were turned off for non-payment in March 2007; that he attended only twenty of forty scheduled visits with the child; that A.C. had been in the same foster home since she was eleven days old; that the foster parents wanted to adopt her; and that she has no medical problems or issues that would make adoption difficult. The caseworker testified that appellant did not have sufficient income or housing to take care of the child and that additional time would not help. She recommended that his parental rights be terminated. The caseworker testified that she did not refer appellant for reunification services until after his paternity was established in August 2006. She said that she had not heard from appellant about his sister's interest in taking the child until A.C. was in her eleventh month of foster care. She stated that the authorities in Oklahoma had informed her by email that the aunt had not yet turned in all of the paperwork. Appellant's sister and her husband were also at the hearing. She testified that they were willing and financially able to care for A.C. and that she had turned in all of the home-study paperwork the week prior to the hearing.

Appellant discussed his multiple changes of residence and sketchy employment history during the relevant time period. He admitted that his utilities were turned off; that, if he were drug-tested that day, he would test positive for marijuana; and that he had not submitted to a second drug assessment or counseling as DHS had requested. He explained: "I can already

tell you what's wrong with me. . . . They couldn't help." He admitted not paying child support, even though he spent $10 to $15 per week on cigarettes. He rationalized his smoking marijuana as "the only thing that keeps me calm." He volunteered, however, that he would be willing to give it up if the judge let him have the child.

On August 28, 2007, the court entered an order terminating appellant's parental rights, finding that DHS had proven by clear and convincing evidence that it had an appropriate permanency plan for the child (adoption) and that it was in her best interest that the petition be granted. The court found that A.C. was likely to be adopted, because her foster family and a family member had come forward to express an interest in adoption. It also found that there was a risk of harm to the child if she had continued contact with her parents. The court found that DHS had also proven by clear and convincing evidence that the child had been out of the home since April 2006, and that, despite meaningful efforts on the part of DHS to rehabilitate the home and correct the conditions that caused removal, those conditions had not been remedied by the parents. The court found that, although appellant completed his first drug-and-alcohol assessment, parenting classes, and a psychological evaluation and had transportation, he tested positive for drugs on seven out of eight drug screens, most recently on July 12, 2007.[2] The court noted that appellant never obtained a second drug-and-alcohol assessment to which he was referred; that he never attended counseling because he did not think he needed it; that he did not obtain stable housing, having had six residences in a fifteen-month period; that he never maintained steady employment; and that he had not

[2]The exhibits actually showed that he tested positive for drugs on six of seven drug screens.

visited regularly, attending only twenty out of forty possible visits. The court stated that it considered several exhibits admitted at the hearing, including appellant's psychological evaluation, drug-and-alcohol assessment, and drug-screen results, along with photographs of appellant's residences.[3] Appellant filed his notice of appeal from the termination order on August 30, 2007.

Appellant argues that the trial court erred in finding sufficient evidence to terminate his parental rights. He points out that he was not part of the bad situation at the motel that caused the child to be brought into custody and stresses that he partially complied with the court orders and the case plan; that he completed parenting classes; that he had a drug-and-alcohol assessment and a psychological evaluation; and that he had started a job. Appellant notes that the home study of his sister's home, which was ordered by the court in March 2007, was not yet complete at the time of the termination hearing. He argues that DHS's delay in completing the home study hampered his ability to avoid the termination of his parental rights. He also challenges the trial court's findings that terminating his parental rights was in A.C.'s best interest; that A.C. was adoptable; and that she would be subject to potential harm if returned to him. Appellant further alleges that the trial court erred in finding that A.C. had been out of the home for over twelve months and that, despite meaningful efforts by DHS, the conditions that caused removal had not been remedied. He agrees that A.C. was out of the home for over twelve months but argues that he received reunification services for

[3]These photographs revealed squalid conditions.

less than twelve months because DHS did not make referrals for him until after the DNA test showed that he is the child's biological father. He now asks for more time.

We review termination of parental rights cases *de novo*. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, __ S.W.3d __ (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id*. When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id*. In matters involving the welfare of young children, we give great weight to the trial judge's personal observations. *Maxwell v. Arkansas Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005).

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, __ S.W.3d __ (2007). Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Id*. Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id*.

Arkansas Code Annotated section 9-27-341(b)(3) (Repl. 2008), provides in pertinent part:

> An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
>
> (A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

Appellant's efforts fell far short of what was required of him to avoid losing his parental rights. Improvement and compliance toward the end of a case plan will not necessarily bar termination of parental rights. *Camarillo-Cox v. Arkansas Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). "[E]vidence that a parent begins to make improvement as termination becomes more imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place." *Id.* at 355, 201 S.W.3d at 401. Too-little progress that is made too late to achieve reunification within a reasonable time from the child's perspective will not suffice. *See Latham v. Arkansas Dep't of Health & Human Servs.*, 99 Ark. App. 25, __ S.W.3d __ (2007).

Additionally, the delay in completing the home study did not prejudice appellant. According to Arkansas Code Annotated section 9-27-338(c) (Repl. 2008), termination is preferred over permanent custody of a relative if reunification with the parent is not in the best interest of the child.

Nor did the delay in offering reunification services to appellant until August 2006 prejudice him. At the hearing on July 30, 2007, appellant showed no sign of significantly improving within the near future. He tested positive for drugs in July 2007. He saw no need to follow through with DHS's requests that he obtain a second drug assessment or go to counseling. He never stopped smoking marijuana and plainly stated that he only intended to do so *if* the court let him have A.C. These facts show that a few more weeks of services would have made no difference. They also fully support the court's findings that termination was in A.C.'s best interest and that she would be subjected to potential harm if returned to him. Finally, we reject appellant's argument that the caseworker's testimony about A.C.'s good chances of being adopted, standing alone, was insufficient to support the court's finding that she was adoptable.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.